

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE MARGUERITE A. GRAYS
Justice

IAS PART 4

SBA MONARCH TOWERS 1, LLC, X

Plaintiff(s)

-against-

PETER HIRAKIS,

Defendant(s)

PETER HIRAKIS, X

Third-Party Plaintiff(s)

-against-

PETER LONGO, PE, OMNIPOINT
COMMUNICATIONS, INC., also known at
T-MOBILE USA, INC.

Third-Party Defendant(s)

The following papers numbered 1 to 6 X read on this motion by third-party
defendant T-Mobile Northeast LLC s/h/a Omnipoint Communications, Inc. for, *inter alia*,
an order pursuant to CPLR §3014 dismissing the third party complaint brought against it.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits	1-4
Answering Affidavits - Exhibits	5
Memoranda of Law	6

Upon the foregoing papers it is ordered that those branches of the motion which are
for an order pursuant to CPLR §§3014 and 1007 dismissing the third-party complaint against

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defendant T-Mobile Northeast LLC are granted. The remaining branches of the motion are denied as moot.

I. The Plaintiff's Allegations

Plaintiff SBA Monarch Towers I, LLC alleges the following:

Defendant Peter Hirakis owns property known as 113-02/12 Springfield Blvd. Queens Village, New York. Plaintiff SBA Monarch Towers I, LLC, a wireless communications company, is the successor tenant under a 2007 site lease between defendant Hirakis, as landlord, and Omnipoint Communications, Inc., as tenant. Section 3 of the lease permits the use of the demised premises "for the transmission and reception of radio communications signals and for the construction, installation, operation [etc.] of related facilities, including without limitation, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities." Section 7(f) of the site lease allows unrestricted access to the leased premises "24 hours a day, 7 days a week" without interference from the defendant for the purpose of altering, replacing, expanding, enhancing, or upgrading the antenna facilities.

Defendant Hirakis has restricted the plaintiff's access to the leased premises to only certain hours of the day and has demanded that the plaintiff contact only him to open a locked access gate.

Plaintiff SBA brought the instant action for the purpose of, *inter alia*, obtaining a declaratory judgment that defendant Hirakis has breached the site lease by prohibiting unrestricted access to the leased premises, obstructing the access way to the leased premises, and interfering with necessary work on the antenna facilities.

While this action was pending, defendant Hirakis sent plaintiff SBA a "30 Days Notice to Tenant of Termination of Tenancy and Landlord's Intention To Recover Possession." Defendant Hirakis has demanded that SBA build a fence around the leased premises, and plaintiff SBA has denied that it has any obligation to build the fence.

II. The Third Party Complaint

The third-party complaint alleges the following:

Third-party defendant Peter Longo, PE and third-party defendant Omnipoint Communications, Inc. "collaborated to install the foundation of the telecommunications antenna without complying with the rules, codes and regulations of the New York City

Department of Buildings (DOB) and other governmental agencies. The third-party defendants developed a plan to circumvent the foundation permitting and testing of said antenna.” The third-party defendants fraudulently and negligently made representations to the DOB concerning the permit and built the antenna in an illegal and inappropriate manner. The antenna caused damage to the building and property owned by Hirakis, and he had to request his tenants to vacate the building.

III. The Allegations of Third Party Defendant T-Mobile Northeast, LLC (T-Mobile)

Omnipoint Communications, which signed the site lease and lease amendment, is no longer functioning because on June 30, 2009 it assigned its assets to Omnipoint Communications Network I, LLC which was subsequently merged into T-Mobile. By an assignment and assumption of lease dated June 30, 2008, Omnipoint assigned all of its rights under the lease to Mobiltie Investments II, LLC, SBA’s predecessor. Although T-Mobile’s predecessor was the initial tenant under the lease, T-Mobile has not had any contractual relationship with defendant Hirakis for more than a decade. T-Mobile has operated communications equipment at the site as a sublessee of SBA since January, 2008.

IV. Discussion

A. CPLR §3014

CPLR §3014, “ Statements,” provides in relevant part: “Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as practicable, a single allegation” (*see, Foley v. D’Agostino*, 21 AD2d 60 1964]; *Pearson v. Pearson*, 15 AD2d 554 [1961]).

T-Mobile contends that the third-party complaint brought by defendant/third-party plaintiff Hirakis does not comply with CPLR §3014, that it is “egregiously far afield from the requirements of CPLR §3014,” and as a result, responding to sections of it is “impossible.”

In the case at bar, the first seven pages of the third-party complaint consist of seven long paragraphs each containing numerous allegations. Moreover, the instant third-party complaint improperly contains much unnecessary evidentiary detail (*see, Fun Fair Park, Inc. v. Ursini*, 8 AD2d 786 [1959]; *Feng Li v Peng*, 2015 WL 4162653[Sup. Ct. 2015]). Where a defendant cannot reasonably be required to frame a response to a complaint which does not comply with the pleading requirements of CPLR §§3013 and 3014, the complaint should be dismissed with leave to replead (*see, Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co.*, 84 AD2d 736 [1981]).

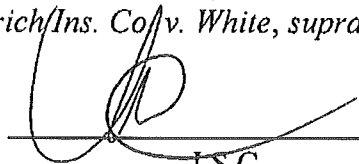
B. CPLR §1007

CPLR §1007 states in pertinent part that “a defendant may proceed against a person not a party who is or may be liable to that defendant for all or part of the plaintiff’s claim against that defendant” (see, *Loch Sheldrake Beach & Tennis Inc. v. Akulich*, 141 AD3d 809 [2016]). A third-party action may be brought only when the defendant in the primary action is proceeding against a person not a party who is or may be liable to him for all or part of the plaintiff’s claim against him (*Zurich Ins. Co. v. White*, 129 AD2d 388 [1987]). “The precept is that the liability sought to be imposed upon a third-party defendant must arise from or be conditioned upon the liability asserted against the third-party plaintiff in the main action.” (*Loch Sheldrake Beach & Tennis Inc. v. Akulich*, supra., 811–12). “The liability must be one rooted in indemnity or contribution (*BRC Elec. Corp. v. Cripps*, 67 AD2d 899, 900 [1979]; *Galasso, Langione & Botter, LLP v. Liotti*, 81 AD3d 880[2011]).

The complaint brought by SBA describes the action as one “for declaratory, monetary, and injunctive relief in connection with a Site Lease under which it located and maintains cellular telecommunication facilities on property leased from Defendant, who has wrongfully restricted access to the property and obstructed necessary repairs and improvements to the facilities. As a result of Defendant’s improper acts and omissions in violation of the Site Lease, Plaintiff has and continues to be harmed.” In contrast, the third-party complaint alleges that “[t]he defendants collaborated to install the foundation of the telecommunications antenna without complying with the rules, codes and regulations of the DOB and other governmental agencies.” The third-party complaint alleges fifteen causes of action for, *inter alia*, breach of contract, fraud, negligence, and conversion. All of these causes of action, leaving aside the fourth for the moment, are not rooted in contribution or indemnity (see, *Galasso, Langione & Botter, LLP v. Liotti*, supra; *BRC Elec. Corp. v. Cripps*, supra). The third-party complaint does not adequately allege that the liability of T-Mobile for wrongs committed in connection with the installation of the antenna arises from or is conditioned upon the liability asserted against third-party plaintiff Hirakis for alleged wrongs committed in restricting access to the leased site. Although the fourth cause of action is labeled as “Contribution,” it fails to allege facts showing how T-Mobile might have liability for the wrongful restriction of access to the site. In the case at bar, the defendant in the primary action is not proceeding against a nonparty who is or may be liable to him for all or part of the plaintiff’s claim against him (see, *Zurich/Ins. Co/v. White*, supra.)

Dated:

MAR 26 2019



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